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Subject: Carolina Journal: Atlantic Coast Pipeline deal reveals cracks in the process

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Controversy surrounding \$57.8 million further infects testy relations between governor, lawmakers

by Dan Way

Gov. Roy Cooper committed an unforced error by circumventing the General Assembly and creating a constitutionally questionable \$57.8 million Atlantic Coast Pipeline fund, political observers and legislators say.

Cooper could have been tone deaf to the sour notes his action was sure to sound, they say, and may lack inner circle advisers influential enough to persuade him to put the brakes on the deal before it boomeranged on

him.

It's an opportunity missed to bridge the political chasm of frequent litigation, veto battles, and hard feelings separating the legislative and executive branches, Meredith College political science professor David McLennan said.

If the energy company coalition wanted to make a truly voluntary contribution, as Cooper claims, he would have been better served to include the General Assembly in the process, McLennan said. The N.C. Constitution requires state money to go through legislative appropriations. Both sides could have shared credit under that harmonious approach.

Instead, Cooper kept the initiative to himself. He unveiled it Jan. 26 within minutes of the state Department of Environmental Quality announcing it issued a vital water permit to pipeline developers building the multistate, 600-mile pipeline from West Virginia to Robeson County.

Cooper said the nearly \$58 million would be used for environmental mitigation, economic development, and renewable energy projects. But details were lacking about the escrow fund he envisioned for the money and specifics on who would get the money, and how much.

Legislative Republicans and others said the timing of the two announcements led to the appearance the deal was a pay-to-play scheme, forcing Duke Energy, Dominion Energy, and their partners to fork over money for a permit for which they already qualified.

Senate leader Phil Berger, R-Rockingham, Lt. Gov. Dan Forest, and others pulled no punches. They said it was a slush fund. The Civitas Institute filed a state ethics complaint against the governor.

Does Cooper, a former state representative and senator, and 16-year attorney general, have the political instincts to avoid this sort of lightning rod on what many see as a clear violation of constitutional separation of powers?

"He should have realized that this is the way it would have been interpreted by a lot of people given the divisive and polarized environment," and he was vulnerable to political attack even if his action were completely innocent, said N.C. State political science professor Andy Taylor.

If Cooper is politically blinded by a left-of-center technocratic desire to do good, compounded by a belief he knows what is best for the state, his senior staff might be faulted for not preventing the political drama.

"Does he have people he can trust who can take him aside and say, 'Look, this kind of smells,'" Taylor said.

Some reports have surfaced that the N.C. Farm Bureau and other private parties initiated the fund negotiations with the pipeline coalition. It's unclear how it ended up in the governor's office. Larry Wooten, Farm Bureau president, has not returned calls for comment.

Taylor believes Cooper would have been better served had he allowed the deal to go forward among the private interests.

"He could still issue the press release. ... He could still claim all of the political credit he wanted," and hold ribbon-cutting ceremonies for the media, Taylor said.

Precedent for a more collaborative approach exists.

Dan Gerlach, president of the Golden Leaf Foundation, said appropriations chairmen from both legislative chambers and representatives of former Gov. Pat McCrory met with him in December 2016 to ask the foundation to administer disaster relief funds after Hurricane Matthew.

"It was all the relevant policymakers together," Gerlach said. That persuaded the foundation to take on that task because it had the grant-making infrastructure in place, even though disaster recovery wasn't a normal function for the organization.

While someone from the Cooper administration contacted him about the pipeline fund, "I do not nor does my board have any interest in stepping into a tug of war about the best way to use this money," Gerlach said.

Taylor agrees with McCrory that the \$57.8 million is tainted because it was arranged outside of constitutional bounds and should not be accepted.

"Now that Republicans want their hands on the money in the General Assembly, that undercuts their argument" against Cooper, Taylor said. "If a guy comes out of a bank with a ski mask on, he's robbed a bank, he's got a pile of money, you don't say, 'I'm making a citizens' arrest. I'll take that now, thank you.'" Instead, the money should be returned to the owner.

Berger defended taking possession of the money in a Feb. 14 news conference. State Rep. Jimmy Dixon, R-Duplin, is among lawmakers who agree that was the way to foil Cooper's plan.

"It was cloaked in secrecy. It was sort of a gotcha type thing when the governor unveiled it. It's just that we came up with a bigger gotcha than he did," Dixon said. The General Assembly passed House Bill 90, taking control of the money and steering it to school districts in the eight counties along Interstate 95 through which the pipeline would pass.

"I think he missed a great opportunity" to bring the two branches together in common purpose. "I don't know if he wants that kind of opportunity," said Dixon, chairman of the House Agriculture Committee, and of Appropriations for Agriculture, and Natural and Economic Resources.

"Something like the pipeline ... has far-reaching implications for us economically. If there ever was going to be an opportunity for us to work together, this was it," Dixon said.

"There's no wonder why the Republicans pushed back like they did" if they were frozen out of the process, McLennan said. But he believes improved relations could bloom in what is now scorched earth.

"I think for the long run, for the next conceivably two years of Cooper's first term, they could have a better working relationship on economic development," McLennan said. Both parties want to bring jobs and business to the state. Both sides want to improve education. They could start the 2018 legislative session by identifying key issues on which collaboration is possible to usher in a period of detente.

"Yet they're kind of acting in a very tribal manner," McLennan said. That was evident in passage of H.B. 90. Democrats spent much of the debate condemning Republicans, but the measure passed on a 104-12 bipartisan vote in the House, and 37-5 in the Senate.

"This is kind of where we are politically. So much of it is about the theater, and getting the headline, and

getting the tweet,” McLennan said. But, he said, the heated rhetoric doesn’t match the common interests.

Although Gov. Jim Hunt was a Democratic hero, he assembled a solid working coalition of pro-business Democratic and Republican lawmakers, McLennan said.

McLennan believes the distrust that has eroded cooperation on economic development matters and led to a series of lawsuits on other issues, especially redistricting, is a recent phenomenon. He said it started under Democratic Gov. Bev Perdue and bled into McCrory’s four years.

It continues with Cooper.